IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

Crl.MC.No. 915 of 2007()

C.R.NO.58/2003 OF KAZHAKKOOTTAM EXCISE RANGE

PETITIONER: ACCUSED NOS.1 & 2

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1. RAJAN, S/O.DIVAKARAN,
   VIJAYAPURATH HOUSE, ANCHALUMMOODU,
   THRIKKADAVOOR, KOLLAM DISTRICT.

2. MANILAL,
   S/O.PRABHAKARAN, VELIYEL VEETTIL,
   ARYAD, AMBALAPUZHA, ALAPPUZHA DISTRICT.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.K.K.RAJEEV

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. THE EXCISE INSPECTOR,
   KAZHAKKOOTTAM EXCISE RANGE,
   THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26/06/2007 ALONG WITH CRL.M.C.NO.927/07 AND CONNECTED CASES THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.Nos.915,927,942,977 & 1009 of 2007

Dated this the 26th day of June 2007

O R D E R

The petitioners have come before this Court aggrieved by the registration of crimes against them under Sections 57(a) and 56(b) of the Kerala Abkari Act. The crux of the allegations raised against the petitioners is that in the toddy samples which was taken from their premises, starch was found to be present, that is, the test of starch was found to be answered positively. The petitioners pray that the proceedings against them may be quashed inasmuch as the presence of starch cannot attract any offence under Section 57(a) of the Kerala Abkari Act as held in Balu vs. State of Kerala 2007(1) KLT 401]. Consequent allegations under Section 56(b) may also be quashed, it is submitted.

2. The learned Public Prosecutor, after taking instructions, submits that the State does not want to press the charge under Section 57(a) of the Kerala Abkari Act and is now limiting the allegation to the offence under Section 56(b) of the

Kerala Abkari Act. Presence of starch is objectionable, contends the learned Public Prosecutor on the ground that starch, which is not an ingredient of genuine toddy, was found to be present. This amounts to violation of the conditions of licence, rules and consequently amounts to infraction of Section 56(b) of the Kerala Abkari act, urges the learned Public Prosecutor. The learned Public Prosecutor submits that the State does not want to press the charge under Section 57(a) of the Kerala Abkari Act but wants to press the charge under Section 56(b) on the sole ground that the toddy kept for sale was found to contain starch which is not an ingredient of genuine toddy. Inasmuch as only genuine toddy is expected to be sold, the petitioners have committed the offence under Section 56(b), it is contended. Necessary instructions have been issued to all the officials not to press the charge under Section 57(a) and to press the charge only under Section 56(b) in all such cases, it is submitted.

3. The learned counsel for the petitioners submits that in that event, the submissions of the learned Public Prosecutor may be taken note of and recorded. The proceedings initiated and the cognizance taken in so far as it relates to the allegation

under Section 57(a) of the Kerala Abkari Act may be quashed and proceedings may be permitted to continue on the specific understanding that the allegation that the petitioners have to face as pressed by the prosecution now is only the one under Section 56(b) of the Kerala Abkari Act.

4. I am, in these circumstances, satisfied that the said request can be accepted and these Criminal Miscellaneous Cases can be disposed of. These Criminal Miscellaneous Cases are accordingly allowed in part accepting the submissions of the learned Public Prosecutor and as agreed by the learned counsel for the petitioners. The prosecution shall stand quashed inasmuch as the allegation under Section 57(a) is concerned. But the courts shall consider whether the allegations raised reveal offences punishable under Section 56(b) of the Kerala Abkari Act.

5. These petitions are accordingly allowed to the extent indicated above.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007